

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|--------------------------------|---|--------------------------|
| LESLIE R. MITCHELL, | : | |
| | : | |
| Petitioner, | : | CIVIL ACTION NO. 17-2089 |
| | : | |
| v. | : | |
| | : | |
| TAMMY FERGUSON, THE DISTRICT | : | |
| ATTORNEY OF THE COUNTY OF | : | |
| PHILADELPHIA, and THE ATTORNEY | : | |
| GENERAL OF THE STATE OF | : | |
| PENNSYLVANIA, | : | |
| | : | |
| Respondents. | : | |

ORDER

AND NOW, this 30th day of August, 2018, after considering the petition for a writ of habeas corpus under 28 U.S.C. § 2254 filed by the *pro se* petitioner, Leslie R. Mitchell (Doc. No. 1), the petitioner's "writ of habeas corpus §§ 2241-2254" (Doc. No. 12),¹ the respondents' response to the petition (Doc. No. 14), and United States Chief Magistrate Judge Linda K. Caracappa's report and recommendation (Doc. No. 16), it is hereby **ORDERED** as follows:

1. The clerk of court is **DIRECTED** to remove this action from civil suspense and **RETURN** it to the court's active docket;
2. The Honorable Linda K. Caracappa's report and recommendation (Doc. No. 16) is **APPROVED** and **ADOPTED**;²
3. The petitioner's petition for writ of habeas corpus is **DENIED**;

¹ This document is written in a manner similar to a memorandum of law.

² Since neither party filed objections to Judge Caracappa's report and recommendation, the court need not review the report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987). Nonetheless, "the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report." *Id.* As such, the court reviewed the report for plain error. See *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) ("In the absence of a timely objection, . . . this Court will review [the magistrate judge's] Report and Recommendation for clear error." (internal quotation marks omitted)). The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The court has reviewed Judge Caracappa's report for plain error and has found none.

4. The petitioner has not made a substantial showing of the denial of a constitutional right and is therefore not entitled to a certificate of appealability, 28 U.S.C. § 2253(c)(2); and

5. The clerk of court shall mark this case as **CLOSED**.

BY THE COURT:

/s/ *Edward G. Smith*
EDWARD G. SMITH, J.